Glen Shor <gshor@campaignlegalcenter.org> on 09/19/2003 04:09:56 PM

Please respond to gshor@campaignlegalcenter.org

To: multicand03@fec.gov
cc:

Subject: Comments on NPRM

Attached (in Microsoft Word format) are comments on Notice 2003-13, Multicandidate Committees and Biennial Contribution Limits.

Please call me if you have any problems opening the attachment.

Thank you in advance for your consideration.

Glen Shor

FEC Program Director

The Campaign Legal Center

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September 19, 2003

Mai T. Dinh
Acting Assistant General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Notice 2003-13

Dear Ms. Dinh:

I am writing on behalf of the Campaign Legal Center to provide comments regarding the Federal Election Commission's Notice of Proposed Rulemaking on Multicandidate Committees and Biennial Contribution Limits (Notice 2003-13).

In this Notice of Proposed Rulemaking, the Commission proposes to clarify in its regulations that:

- a political committee which meets the criteria for "multicandidate political committee" status (as indicated in 2 U.S.C. § 441a(a)(4)) automatically becomes a "multicandidate political committee" upon doing so – and may not "opt out" of such status despite meeting those criteria;
- a political committee must file FEC Form 1M no later than 10 days after meeting the criteria for "multicandidate political committee" status; and
- hard money contributions made by an individual to candidates count against the individual's aggregate biennial contribution limitation for the two-year period (*i.e.*, January 1 of an odd-numbered year through December 31 of an even-numbered year) in which such contributions are actually made – regardless of the year in which the recipient candidates stand for election.

We support these proposals. They reflect the language of the Federal Election Campaign Act of 1971 (as amended). 2 U.S.C. § 441a(a)(4) indicates that "the term 'multicandidate political committee' means a political committee which has been registered under section 433 of this title for a period of not less than 6 months, which has received contributions from more than 50 persons, and except for any State political party organization, has made contributions to 5 or more candidates for Federal office." Multicandidate status is thus clearly automatic upon meeting those criteria. The only "opt-out" from such status for a political committee is not to meet the criteria in the first place (*e.g.*, refrain from making contributions to more than four candidates for Federal office).

Likewise, 2 U.S.C. §441a(a)(3) states (in relevant part): "During the period which begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year, no individual may make contributions aggregating more than . . . $37,500, in the case of contributions to candidates and the authorized committees of Congress." This language plainly attributes candidate contributions by individuals to the aggregate limit for the two-year period in which such contributions are actually made. Notably, as the NPRM recognizes, the Bipartisan Campaign Reform Act of 2002 deleted language previously contained in FECA which specified that contributions to candidates made by individuals in years other than those in which such candidates stood for election would be considered made in the election year for purposes of the aggregate limitation.

Apart from reflecting the plain language of FECA (as amended), conforming the FEC's regulations to the revised statute's clear requirement that individuals' hard money contributions to candidates tally against their aggregate limit for the two-year period in which such contributions are actually made would eliminate the confusion (and inadvertent donor violations) that prevailed under the previous approach.[1] It would also enhance the Commission's ability to monitor compliance with the aggregate limit.[2] For these reasons, the Commission had recommended a legislative change to similar effect in its Annual Reports for 1997 through 2000.

Thank you in advance for your consideration of these comments. We are not requesting that the Commission hold a hearing on these proposed rules on October 1, 2003. However, if the Commission does decide to hold such a hearing, I would appreciate having the opportunity to testify on behalf of the Campaign Legal Center.

Sincerely,

/s/ Glen Shor

Glen Shor
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[1] In its Annual Reports for 1997 through 2000, the Commission noted the problems that arose under the prior statutory language (deleted by the Reform Act), in which contributions by individuals to candidates tallied against their aggregate limits for the year in which such candidates stood for election. Individuals who logically assumed that their contributions to candidates counted against their aggregate limits for the year in which such contributions were actually made sometimes exceeded their aggregate limits. *See* FEC, Annual Report 1997, p. 51; Annual Report 1998, pp. 38-39; Annual Report 1999, p. 44; Annual Report 2000, pp. 41-42.

[2] As likewise noted in the FEC's Annual Reports for 1997 through 2000, in observing a contribution by an individual to a candidate, the Commission would not then have to determine whether it was given to retire debt from a previous campaign or made for the next election for purposes of determining compliance with the aggregate limit. *See id.*